

**MEMORANDUM OF UNDERSTANDING
REGARDING CERCLA ACTIVITIES**
Between the
**UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY, REGION SIX**
And the
PUEBLO OF LAGUNA

I. PURPOSE

This Memorandum of Understanding ("MOU") is entered into between the United States Environmental Protection Agency, Region 6 (the "EPA"), and the Pueblo of Laguna (the "Pueblo")(collectively "the Parties") to facilitate consultation, coordination and cooperation among the Parties regarding plans and activities to assess the impacts of uranium mining and ensure the protection of human health and the environment.

II. ROLES AND RESPONSIBILITIES

A. General Principles and Goals

The EPA is committed to working with Tribal Nations, including the Pueblo, in a manner consistent with the Presidential Memorandum dated April 29, 1994, 59 Fed. Reg. 22951 (May 4, 1994)("Government-to-Government Relations With Native American Tribal Governments") and the EPA 1984 Indian Policy. EPA's policy is to act in a manner respectful of each Tribe's status as a sovereign nation and to consult, to the greatest extent practicable and to the extent permitted by law, with tribal governments prior to taking actions that affect federally recognized tribal governments and their lands and environment. Region 6 EPA has adopted a Tribal Consultation Policy Statement and Elevation Protocol, hereby incorporated by reference and attached hereto, which provide additional guidance.

The Pueblo of Laguna is a federally recognized and sovereign Indian Tribe with jurisdiction over lands recognized as Indian country. The Pueblo has authorities under Tribal and federal law which it may, in its discretion, exercise to further the best interests of the Pueblo and Pueblo citizens. The Pueblo determines under its laws and custom to whom authorities are delegated within its government and who may represent the Pueblo in government-to-government interactions. The Pueblo has determined that an MOU with EPA will facilitate coordination and consultation about activities related to contamination from uranium mining and its impacts on lands, structures, resources and residences of the Pueblo and Pueblo citizens.

The Pueblo and EPA mutually agree that the goals of protecting the environment and protecting human health are of the utmost importance. The parties intend that the activities and procedures described in this MOU will help achieve these goals for the benefit of the citizens, natural resources, cultural resources, economy and other interests of the Pueblo and others who may be affected by contamination related to uranium mining.

B. Scope of Activities

This MOU is intended to cover activities undertaken by Region 6 pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended, 42 U.S.C. Sections, 9601 et seq.

EPA – The parties acknowledge that EPA’s plans include, but are not limited to, the following activities:

- Aerial surveys and photos,
- Sampling of soils, water and other media within Indian country under Pueblo jurisdiction, sampling inside residences of Pueblo citizens,
- Sampling inside residences of Pueblo citizens,
- Interviews of citizens of the Pueblo and community meetings,
- Collection/compilation and analysis of data,
- Preparation of plans, reports, fact sheets and other documents,
- Other activities commonly associated with preliminary assessment and site investigation (PA/SI) work with CERCLA.

PUEBLO – By this MOU, the Pueblo commits to cooperate with EPA in the above activities and:

- Advise EPA about unique concerns that the Pueblo may have,
- Facilitate access for the preliminary assessment/site investigation (PA/SI) and other CERCLA activities on Pueblo lands and in structures owned or managed by the Pueblo,
- Assist EPA with gaining necessary access to the land and dwellings of Pueblo citizens for purposes of residential structure assessments,
- Assist EPA with address information for Pueblo residents, with the understanding that this information may be confidential,
- Comment on plans, reports and other documents, and
- Share existing environmental data, other documents and important information with EPA.

C. Consultation and Coordination

To accomplish the goals and activities described in this MOU, the parties agree that it is necessary and appropriate to establish and maintain effective communication

through various means which may include, when appropriate formal consultation between governmental officials, or informal contacts and coordination between Pueblo and EPA staff.

The following specific consultation and coordination activities are contemplated:

1. EPA plans to meet with, present information and consult with the Pueblo's elected officials and Council in October 2009, and as requested by the Pueblo.
2. EPA will coordinate with representatives of the Pueblo to identify appropriate procedures for EPA personnel to follow when entering Pueblo lands under nonemergency circumstances.
3. The Pueblo agrees to advise EPA of any particular locations where access, photography, sampling or other activities may be subject to restrictions.
4. The Pueblo agrees to advise EPA of religious ceremonies or other activities so that EPA can try to avoid unnecessary disruption of them.
5. The parties agree to establish and keep current, a list of appropriate contacts within their respective governments for communication about technical, legal and other issues.
6. The parties agree to follow the Elevation Protocol, whereby staff at EPA and the Pueblo will develop and maintain appropriate lines of communication and issues will be elevated if and when appropriate.
7. EPA agrees to coordinate with the Pueblo concerning meetings with Pueblo citizens and communities so that Pueblo representatives may attend, to the extent practicable.
8. The parties agree that EPA citizen interview protocols will be reviewed by an Institutional Review Board (IRB) approved by the Pueblo; however, enforcement related interviews, investigative activities, and information requests, and civil or criminal discovery or process shall not be subject to IRBA or Pueblo review. This IRB-Pueblo review process shall also not apply to EPA related investigations of waste, fraud, abuse, misappropriation, civil rights, or other matters that if proven could constitute a violation of federal law, regulations, or contract.
9. After collection of data, analysis and preparation of draft reports, EPA will provide to the Pueblo a copy of the draft report and allow thirty (30) days

for comment prior to finalizing the report, whenever possible. EPA will provide a copy of its final report to the Pueblo.

D. Information and data sharing

1. EPA anticipates collecting data from various sources, including but not limited to existing information and new data from the Pueblo, individual Pueblo citizens, other governmental agencies and other sources, and plans to create a database using this information. Some form of this data may ultimately be made available to the public, provided that no confidential trade secrets, commercial, or financial information of the Pueblo, which is designated as such by the Pueblo at the time such information is submitted to the EPA, shall be made available to the public by the EPA, except in compliance with the applicable provisions of 40 C.F.R. Part 2, Subpart B. EPA does not contemplate the collection of data related to the health of individual citizens; however, to the extent that EPA receives such information, the EPA will comply with personal privacy protections as applicable under the Freedom of Information Act (FOIA), 5 U.S.C. Section 552 et seq., and the Privacy Act.
2. The Pueblo will cooperate by voluntarily providing EPA with information in the Pueblo's possession that is related to past uranium mining and existing contamination, including technical data, leases, agreements, maps and other documents that the parties agree are pertinent to assess the impacts of uranium mining and to ensure the protection of human health and the environment, which shall include investigation and enforcement of the laws and regulations related to such matters, including recovery of response costs. In particular, the Pueblo will assist EPA in acquiring documents and information related to prior efforts to assess or address mining impacts on the Pueblo, including information provided to or received from the Department of Interior Bureau of Indian Affairs (BIA), copies of agreements with potentially responsible parties, and information about past reclamation efforts.
3. The Pueblo will assist EPA in identifying and meeting with elders and other individuals who may have historic information or expert knowledge about uranium mining on the Pueblo, potentially responsible parties or factors related to the resulting contamination of lands, resources, structures, and residences on the Pueblo.
4. The Pueblo, as appropriate,
 - a. Advise EPA of any information that may be confidential, sensitive or restricted,

- b. Designate any information it deems to be confidential business information as defined in federal regulations,
 - c. Redact information prior to submittal to EPA if the Pueblo determines that it is not pertinent and should not be disseminated to the public view,
 - d. Refrain from providing information that would impermissibly disclose religious or culturally sensitive sites, and
 - e. Coordinate with and advise EPA of any issues or questions related to information disclosure or sharing.
5. EPA will accommodate, to the extent permitted by applicable law, the Pueblo's concerns related to the collection, use or release of culturally sensitive or private information, and avoid potential disruption of religious ceremonies or traditionally lifeways.
6. Once provided to or otherwise in EPA's possession, the parties acknowledge that information may be subject to public disclosure in accordance with the FOIA, the Privacy Act and other applicable federal laws and policies. EPA will protect private addresses and names, confidential business information, and other information in compliance with federal law, regulations and applicable policy.
7. EPA will follow the "Regional Policy on Sharing Information with State and Tribes" dated September 9, 2004, attached and hereby incorporated by reference.

E. Specific Activities

1. Aerial Survey – The Pueblo gives permission for at least one aerial survey. EPA will coordinate with Pueblo representatives regarding potential areas to be added to the survey area. Pueblo will advise EPA of any religious ceremonies or other traditional activities that might be disrupted, and will assist EPA in finding ways to avoid unnecessary disruption of the same.
2. PA/SI – The Pueblo agrees that, upon prior notice, EPA will be provided access to Tribal lands and structures as necessary to conduct sampling and other activities typically included in a CERCLA Preliminary Assessment and Site Investigation. The PA/SI is the process used in remedial site evaluation under the National Contingency Plan prior to the listing of a site on the National Priorities List, as described at 40 C.F.R. Section 300.420.
3. Individual lands and structures – the Pueblo agrees to help EPA identify individual Pueblo citizens and their residences, and gain access to residences, buildings, wells, and other structures as necessary to take samples and investigate uranium contamination.

III. MICELLANEOUS PROVISIONS

A. Effective Date, Amendment and Termination

This MOU becomes effective upon the signature of the Parties and is to remain in effect for a period of two (2) years. This MOU may be extended or modified at any time upon the mutual written consent of the parties. Either party may terminate its participation in this MOU at any time by providing written notice to the other party at least thirty (30) days in advance of the desired termination date.

B. Notification

Whenever, under the terms of this MOU, notice is to be given or written comments or other documents are to be sent by one Party to another, the notice or comments are to be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing.

For EPA:

Mr. Samuel Coleman, P.E.
Division Director, superfund (6SF)
U.S. EPA Region 6
1445 Ross Avenue
Dallas, Texas 75202-2733

For the Pueblo:

Governor John E. Antonio Sr.
Pueblo of Laguna
P.O. Box 194
Laguna, New Mexico 87026

C. Dispute Resolution

The parties agree that disputes, if any, typically should be resolved in accordance with the Region 6 Elevation Process for EPA and Tribal Governments ("Elevation Protocol"), dated June 11, 2008, attached hereto and hereby incorporated by reference.

D. Limitations

Each party to this MOU has and reserves all rights, powers and remedies now or hereafter existing at law or in equity, or by statute or otherwise, and nothing in this MOU waives or forecloses the exercise of any such rights, powers or remedies.


All commitments made by EPA in this MOU are subject to the availability of appropriated funds and the Agency's budget priorities. Nothing in this MOU, in and of itself, obligates EPA to expend appropriations or to enter into any contract, assistance agreement, interagency agreement, or other financial obligations. Further, this MOU does not constitute rulemaking by the EPA.

The provisions of this MOU neither constitute, nor should they be construed as, a covenant not to sue or a waiver of prosecutorial discretion concerning any matter. The Parties' participation in this MOU and the CERCLA process does not constitute a waiver of any sovereign immunity by the Pueblo or the United States.

The MOU is not intended to confer any benefits or impose any obligations on the public. The MOU does not create any right or benefit, substantive or procedural, enforceable at law or in equity by any person against EPA or the Pueblo, their officers or employees, the Federal Government, or any other person. This MOU does not apply to any person outside the Federal Government or the Pueblo. The MOU does not provide any right to judicial review. The sole and exclusive remedy for any failure on the part of a party to carry out its intentions under the MOU will be the withdrawal from this MOU.

for 
AI ARMENDARIZ
REGIONAL ADMINISTRATOR

22 June 2010
Date

for 
JOHN E. ANTONIO SR.
GOVERNOR, PUEBLO OF LAGUNA

22 June 2010
Date

Attachments:

1. Region 6 Tribal Consultation Policy Statement
2. Memorandum on Reaffirmation of Region 6's Relationship with Tribal Governments, including the Region 6 Elevation Process for EPA and Tribal Governments ("Elevation Protocol")
3. Regional Policy on sharing Information with States and Tribes.

REGION 6 TRIBAL CONSULTATION POLICY STATEMENT

Tribal consultation is the process of seeking, discussing, and considering the views of federally recognized tribal governments at the earliest time possible in EPA Region 6's decision-making process to the fullest extent feasible and permitted by law. Tribal consultation is more than providing information about what the agency is planning to do and allowing comment. Rather, it is respectful, timely and effective interactive communication that results in the open sharing of information, the full expression of Tribal and EPA views and the consideration of tribal perspectives in a decision making process that demonstrates respect for tribal self-governance and sovereignty. The goal of each tribal consultation shall be to reach mutually agreeable solutions.

Therefore, it shall be the policy of EPA Region 6 to provide a mechanism for consultation that affords tribal leadership access to the Agency's regional leadership. This is accomplished first through government-to-government communications by officials of appropriate authority, as determined by the Regional Administrator and the Tribal Chief/Chairman. The timeframe and manner of these communications should be negotiated between EPA and the Tribe(s), consistent with any national regulations and guidance. (Separate procedures would need to apply in cases of formal enforcement actions in which the tribe is a defendant.) In the case of disagreements, EPA and Tribal employees should follow the attached elevation protocol, which will ensure that issues are brought to senior officials for decision in a timely manner. Nothing in the elevation protocol would preclude direct communication by a Tribal Chief/Chairman with the Regional Administrator. In addition, where the Region is developing a significant new policy or decision affecting Tribes, or where the Tribal Chief/Chairman believes the issue so merits, EPA and the Tribe will engage in more formal consultation, involving direct face-to-face meetings at a senior level.

Understanding that each tribe is unique, tribal governments are not prevented from developing their own EPA/Tribal Consultation Policy, Protocol or Guidance and submit it for EPA review and concurrence.



Arkansas Louisiana
New Mexico
Oklahoma Texas

REGION 6

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All Employee Memorandum

Category: *Freedom of Information Act (FOIA); Regional Policy*

Effective Date: September 9, 2004

Contact: Lawrence Starfield

Regional Policy on Sharing Information with States and Tribes

This is being sent as R6 All Employee Memo - Please do not reply to this mass mailing
This memo and all Region 6 "All Employee Memos" may be viewed on the Region 6 Intranet*****

NO HARD COPY TO FOLLOW

September 9, 2004

MEMORANDUM

SUBJECT: Regional Policy on Sharing Information with States and Tribes

FROM: Lawrence E. Starfield /s/ *Larry Starfield*
Deputy Regional Administrator (6RA-D)

TO: All Region 6 EPA Employees

The Region frequently receives information which is of interest to our partner State or Tribal government environmental agencies. It is Region 6 policy not to require formal Freedom Of Information Act (FOIA) requests from our State and Tribal governments which seek environmental information. At the same time, when we release information to our partner agencies without a FOIA request, we should be careful to release only what is generally available to the public under FOIA.

For instance, information with privacy implications (names, home addresses, etc.) should not be released, either under FOIA or under this Region 6 policy. We should be mindful that any inadvertent release of internal deliberative materials or enforcement materials may be interpreted as a "waiver" of governmental privileges, thereby reducing our capacity to withhold such materials in the future.

Therefore, the main points to keep in mind are:

- We do not require formal FOIA requests from States or Tribes for publicly available documents, and we will handle such requests promptly, without charging a fee for searching and copying.

- We should only release the same open information which we would have released to the general public under FOIA.

Instruction on this policy will be added to the quarterly "FOIA Overview" training course offered by FOIA Officer Jerva Durham (ext. 6597) and one of our FOIA attorneys, Paul Witthoeft (ext. 8057). Jerva and Paul are also the persons to contact for assistance when handling a State or Tribal request to ensure consistency with the principles of release under FOIA. Their alternates are Maryann Morales (ext. 6598) and attorney Robyn Moore-Johnson (ext. 8054).

I appreciate your help in advancing the partnership relationships with our States and Tribes. If you have any questions or comments concerning our policy on sharing information with States and Tribes, please feel free to email them to R6Suggest@epa.gov.

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MEMORANDUM

SUBJECT: Reaffirmation of Region 6 Relationship with Tribal Governments

FROM: Regional Administrator

TO: All Region 6 Employees

The United States has a unique, legal relationship with Tribal governments. This relationship, built on mutual respect and the recognition of tribes as sovereigns, is governed by treaties, statutes, Executive Orders and court decisions. EPA has its own tribal policy that addresses and defines the relationship with our Tribal partners in protecting human health and the environment. Administrator Jackson reaffirmed this policy in July 2009.

The purpose of this memorandum is to reaffirm our regional commitment to a strong partnership with Tribal governments. As with any partner, we must continue to ensure the close involvement and consultation with Tribal governments in making decisions that affect their land or have tribal implications. In addition, and in the spirit of mutual respect, we will follow the tribes' communication and visitation protocols. There are 66 Tribes in our Region, and each may have a different protocol. We suggest that you contact the Office of Environmental Justice and Tribal Affairs (OEJTA) prior to making your initial visit to a tribal nation. We also invite you to take "Working Effectively with Tribal Governments" training which you can access online at:

<http://www.tribalgov.golearnportal.org/>

Every EPA employee should reinforce our Agency's commitment to the government-to-government relationship between Federal and Tribal governments. We should also continue to recognize Tribal governments as sovereign entities with authority and responsibility for their populations and land. Please help us ensure that our daily interactions with Tribal partners reflect this commitment.

Attachment

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Region 6 Elevation Process for EPA and Tribal Governments

Pursuant to the federal trust responsibility and EPA's Indian Policy, Region 6 is committed to building cooperative partnerships with Tribes. As with any relationship, misunderstandings and disagreements may arise from time to time. EPA will seek to resolve issues in a timely manner with our tribal partners on a government-to-government basis. The following process is designed to effectively elevate issues through EPA and Tribal organizations in an effort to arrive at mutually agreeable solutions.

Elevation of an issue will typically follow this process:

1. An issue is raised by a tribal Environmental Staff or Director to the appropriate EPA Project Officer or program staff. If it cannot be resolved at this level within 15 days, then
2. The issue will be put in writing by the involved parties. EPA staff will elevate the issue to their supervisor(s) and management to seek a solution with Tribe's Environmental Director. If it cannot be resolved within 30 days, then
3. The issue will be formally elevated through EPA Senior Staff and senior tribal management, with final elevation to the Regional Administrator and the appropriate Tribal leader. Resolution should be accomplished within 30 days.

Notes: (a) This elevation process is not applicable in cases of formal enforcement actions in which the tribe is a defendant.

(b) If an EPA program has an issue with a tribe that needs resolution, program staff should contact the Ombudsman for assistance in negotiating with tribal staff. If it remains unresolved after 30 days, the Division Director should work with the OEJTA Director to communicate directly with tribal leaders. Negotiations with tribes should incorporate respect for cultural protocols. These can be determined with the assistance of the Ombudsman, Associate Director for Tribal Affairs, and OEJTA Director.
